IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.568 of 2007

Sudha .. Petitioner

Vs

1. State of Tamil Nadu,
   rep. by the Secretary,
   Prohibition & Excise Department,
   Fort St. George, Chennai 600009.

2. The District Magistrate and
   the District Collector,
   Villupuram District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Vadivel Murugan
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The order dated 30.3.2007, passed by the second respondent, dubbing one Sengalvarayan, son of Adhikesavan, as bootlegger and directing his detention under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), is challenged in this writ petition by the wife of the detenu.

2. The order of detention came to be passed by the second respondent on the basis of the ground case said to have taken place on 7.3.2007 within the jurisdiction of the Inspector of Police, Kallakurichi Prohibition Enforcement. The detenu was found to be in possession of one white coloured plastic can filled with 5 Litres of poisonous arrack and two lorry tubes each containing 55 Litres of poisonous arrack, and was

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selling the same. A case was registered in Kallakurichi Prohibition Enforcement Wing in Crime No.291 of 2007 under Section 4(1-A), 4(1)(aaa) and 4(1)(i) of the Tamil Nadu Prohibition Act. On chemical analysis of the arrack seized, it was disclosed that the samples contained 3.47, 3.47, 3.47mg% W/V of Atropine respectively, which is a poisonous substance, which, in the opinion of the medical officer, would develop giddiness, vomiting, congestion of eye lids and respiratory failure, and if not treated vigorously would result in death due to Atropine poison. The order of detention is also supported with three adverse cases against the detenu bearing Crime Nos.673/2007, 142/2007 and 241/2007 on the file of the Kallakurichi Prohibition Enforcement Wing for the offences punishable under the Tamil Nadu Prohibition Act.

3. Heard Mr.S.Vadivel Murugan, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor appearing for the respondents.

4. Since Mr.S.Vadivel Murugan, learned counsel for the petitioner wants to restrict his submission only on the ground of delay in considering the representation, we do not propose to go into the other aspects, except to refer the delay in considering the representation as highlighted by the counsel for the petitioner.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that

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the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 30.3.2007. A representation was made to the detaining authority on 11.4.2007 and the detaining authority received the same on 18.4.2007. The Government received the representation on 26.4.2007 and parawar remarks were called for from the Sponsoring Authority on 26.4.2007 itself. Remarks were received from the Sponsoring Authority only on 3.5.2007. The delay in receiving the remarks by the Sponsoring Authority, viz., between 26.4.2007 and 3.5.2007 - a period of seven days, was highlighted by the learned counsel for the petitioner. Even though 28.4.2007, 29.4.2007 and 1.5.2007 happened to be public holidays, there is no convincing reply on behalf of the State for the delay in submitting the remarks by the Sponsoring Authority. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for four days (excluding Saturday and Sunday), between 26.4.2007 and 3.5.2007. There is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

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8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

We are of the considered opinion that the delay which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 30.3.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To:

1. The Secretary,
   State of Tamil Nadu,
   Prohibition & Excise Department,
   Fort St. George, Chennai 600009.

2. The District Magistrate and
   the District Collector,
   Villupuram District.

3. The Superintendent,
   Central Prison, Cuddalore.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai - 9.

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SSK(CO)
RVL 03.09.2007

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